



ECONOMIC DEVELOPMENT AUTHORITY AGENDA
Tuesday, June 19, 2012
Immediately Following the Regular Meeting
Coon Rapids City Center
Council Chambers

Call to Order

Roll Call

Approval of Minutes of Previous Meeting(s)

EDA Special Meeting 2-14-12

New Business

1. Economic Development Assistance for Autumn Glen Senior Living, LLC, 3707 Coon Rapids Blvd.
Cons. Economic Development Assistance Package for Autumn Glen Senior Living, LLC, 3707 Coon Rapids Boulevard:
 - a. Public Hearing
 - b. Cons. Resolution EDA 12-2 Authorizing Expenditure of Excess Tax Increments from Tax Increment District 1-6
 - c. Authorize Chair and Secretary to Execute a Contract for Private Development

Other Business

Adjourn



EDA Regular

Meeting Date: 06/19/2012

SUBJECT:

Attachments

2-14-12 EDA Special Meeting

UNAPPROVED

ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING OF FEBRUARY 14, 2012

A meeting of the Coon Rapids Economic Development Authority was called to order by President Tim Howe at 6:42 p.m. on February 14, 2012 in the Council Chambers.

Members Present: President Tim Howe, Commissioners Denise Klint, Melissa Larson, Paul Johnson, Jerry Koch, Bruce Sanders, and Scott Schulte

Members Absent: None

CALL TO ORDER

President Howe called the meeting to order at 6:42 p.m.

ROLL CALL

All members were present.

APPROVE MINUTES OF JANUARY 3, 2012

MOTION BY COMMISSIONER SANDERS, SECONDED BY COMMISSIONER JOHNSON, TO APPROVE THE JANUARY 3, 2012, MINUTES AS PRESENTED. THE MOTION PASSED UNANIMOUSLY.

1. AMERICAN PRECLINICAL SERVICES, 8945/8960 EVERGREEN BOULEVARD

The EDA is asked to consider an economic development assistance package for American Preclinical Services, LLC.

American Preclinical Services (APS), which currently has approximately 75 employees in Coon Rapids, proposes an expansion project. APS performs preclinical research for companies developing medical devices. APS currently owns its 44,000 square foot facility at 8945 Evergreen Boulevard.

APS' proposed expansion project involves substantially rehabilitating 18,000 square feet of space in a currently vacant building at 8960 Evergreen Boulevard, across the street from the existing facility. The total project cost is approximately \$2.6 million, including about \$1.5 million for building construction and \$1.1 million for equipment. APS plans to create at least 40 new jobs within two years of completing the project. New employees would fill management, research, and technical positions. The new positions would pay an average wage of \$19.00 per hour excluding benefits. The business subsidy agreement requires that the company create these jobs as part of receiving assistance from the EDA.

In an effort to provide cities with an economic development stimulus tool, the 2010 Legislature approved a temporary provision to TIF law allowing for the use of cash balances in TIF districts

to be used for loans and assistance for any project that creates jobs, including construction jobs. At its August 16, 2011 meeting, the City Council adopted Resolution 11-51 modifying the budget of TIF district 1-6 to allow for such expenditures. Projects receiving this assistance must begin by July 1, 2012 and funds must be expended by December 31, 2012. Using this cash balance, staff proposes a grant in the amount of \$350,000.

Council is asked to hold a public hearing and consider Resolution 12-38 approving a spending plan and authorizing the EDA to make a grant to APS. Assuming the Council adopts the resolution, the EDA is asked to hold a public hearing and consider a business subsidy agreement. The EDA is also asked to consider a grant agreement stipulating the terms of the grant. No funds will be disbursed until APS submits a sworn construction statement and invoices for the completed work.

As no one appeared, President Howe opened and closed the public hearing at 6:46 p.m.

MOTION BY COMMISSIONER KOCH, SECONDED BY COMMISSIONER LARSON, TO ADOPT RESOLUTION EDA 12-1 AUTHORIZING THE EXPENDITURE OF EXCESS TAX INCREMENTS FROM TAX INCREMENT DISTRICT 1-6; AUTHORIZE THE CHAIR AND SECRETARY TO EXECUTE A BUSINESS SUBSIDY AGREEMENT; AND AUTHORIZE THE CHAIR AND SECRETARY TO EXECUTE A GRANT AGREEMENT.

THE MOTION PASSED UNANIMOUSLY.

OTHER BUSINESS

There was no other business to come before the EDA.

ADJOURN

MOTION BY COMMISSIONER SANDERS, SECONDED BY COMMISSIONER JOHNSON, TO ADJOURN THE FEBRUARY 14, 2012, SPECIAL MEETING OF THE EDA AT 6:47 P.M. THE MOTION PASSED UNANIMOUSLY.

Respectfully submitted,

Cathy Sorensen
City Clerk



EDA Regular

1.

Meeting Date: 06/19/2012

Subject: Economic Development Assistance for Autumn Glen Senior Living, LLC, 3707 Coon Rapids Blvd.

From: Matt Brown, Community Development Specialist

INTRODUCTION

The EDA is asked to consider an economic development assistance package for Autumn Glen Senior Living, LLC for construction of a 100-unit senior housing project at 3707 Coon Rapids Boulevard.

DISCUSSION

Project Summary

Autumn Glen Senior Living proposes constructing a 100-unit senior housing campus, including 32 independent living units, 36 assisted living units, and 32 memory care units on the former Frank's Nursery site at 3707 Coon Rapids Boulevard. Autumn Glen submitted an application to the City for tax-increment financing to assist with project costs. Staff has reviewed the application and project pro forma and believes that the project is an appropriate candidate for financial assistance. The project involves demolishing the vacant Frank's Nursery building and is located in a designated redevelopment area, Port Wellness. While the Council approved site plan for this project in August 2011, the developer had not secured sufficient equity and financing until recently.

Proposed Financial Assistance

Staff believes that Autumn Glen's project is a good candidate for financial assistance because:

- The project involves redevelopment of a vacant and unsightly building in an identified redevelopment area, Port Wellness.
- It will create both permanent jobs and temporary construction jobs.
- It meets the City's housing goals with respect to adding senior housing units and providing a variety of housing types.

In 2011, the Council approved a \$420,000 economic development grant funded by existing cash balances in tax increment financing (TIF) districts to facilitate the \$19 million construction project. Staff proposed that the original grant would be funded using a temporary provision in TIF law approved by the State Legislature in 2010. This provision allowed for the use of cash balances in TIF districts to be used for loans and assistance for any project that creates jobs. Because the construction deadline for using this provision has passed, Staff proposes using a different mechanism for providing a \$420,000 economic development grant. Because the development site is located within TIF Project Area No. 1, State TIF law allows for use of existing cash balances in existing districts for development projects that would not occur "but for" the assistance. Staff proposes using funds from TIF District 1-6, which was the proposed source for the original grant. This grant will cover costs associated with demolishing the existing Frank's Nursery building, site preparation, and utility work. The proposed uses of funds are eligible expenditures under the budget for District 1-6. Staff feels that this type of grant is a better type of financial assistance than establishing a new tax-increment financing district. While both types of assistance can provide the

same level of funding, the grant provides the developer with cash up front, rather than over time. Also, the grant requires much less administration than a new tax-increment district, which results in lower costs for the City. To be clear, no new increment will be generated.

At its June 19 meeting, the City Council will consider Resolution 12-77 authorizing the EDA to make a grant to Autumn Glen Senior Living. Assuming the Council adopts the resolution, the EDA is asked to hold a public hearing and consider a Contract for Private Development. No funds will be disbursed until the Contract has been executed and Autumn Glen submits documentation of costs it incurs. If Autumn Glen does not complete the project or create the required number of jobs, the grant proceeds must be returned. The Contract stipulates these terms.

ALIGNMENT WITH STRATEGIC VISION

This item relates to the **Community Development and Redevelopment** section of the 2030 Strategic Vision in the following way:

The project will grow the City's economic base, encourage redevelopment of blighted property, and provide a variety of housing choices in the City.

RECOMMENDATION

Staff recommends that the EDA:

- a. Hold public hearing
- b. Adopt Resolution EDA 12-2 authorizing expenditure of tax increments from Tax Increment District 1-6
- c. Authorize the Chair and Secretary to execute a Contract for Private Development between the EDA and Autumn Glen Senior Living, LLC

Fiscal Impact

BUDGET IMPACT:

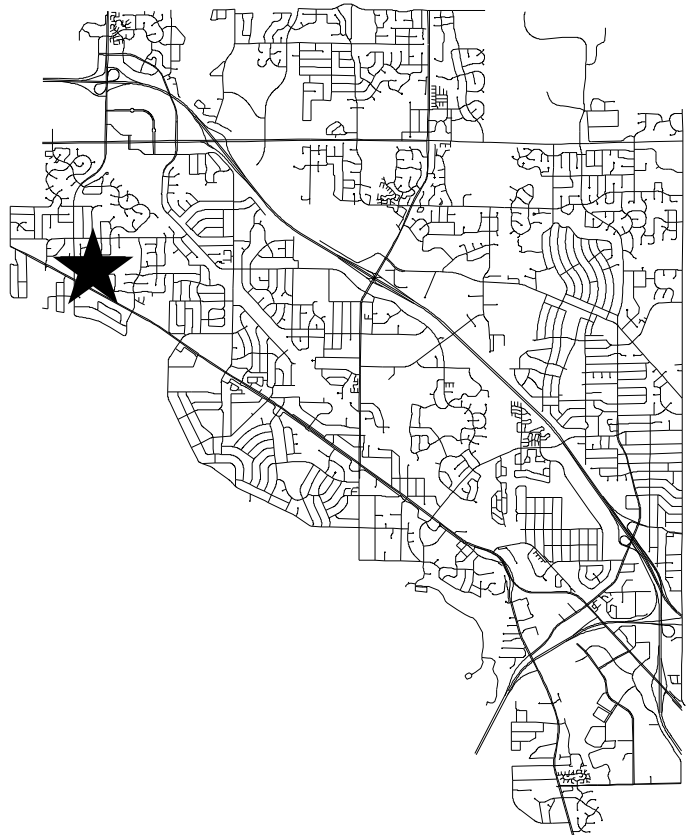
Funding for the assistance will come from TIF District 1-6. These funds have limited uses. There is no budget impact to City's the general fund.

Attachments

Location Map

Contract for Private Redevelopment

Resolution EDA 12-2



CONTRACT FOR PRIVATE REDEVELOPMENT

THIS CONTRACT FOR PRIVATE REDEVELOPMENT is made and entered into as of the ____ day of _____, 2012, by and between the Economic Development Authority in and for the City of Coon Rapids (the “City”), a public body corporate and politic (the “Authority”), and Autumn Glen Senior Living, LLC, a Minnesota Limited Liability Company (“Autumn Glen”).

ARTICLE 1

Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

“**Act**” means the Economic Development Authority Act, Minnesota Statutes, Sections 469.090 to 469.108, as amended.

“**Authority**” means The Economic Development Authority in and for the City of Coon Rapids.

“**Business Subsidy Act**” means the Minnesota Business Subsidy Act, Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

“**City**” means the City of Coon Rapids, Minnesota.

“**Construction Plans**” means the zoning and subdivision approvals and the plans, specifications, drawings and related documents on the construction work to be performed on the Development Property which a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City, and (b) shall include at least the following for each building: (1) site plan; (2) foundation plan; (3) basement plans; (4) floor plan for each floor; (5) cross sections of each (length and width); (6) elevations (all sides); (7) landscape plan; and (8) such other plans or supplements to the foregoing plans as the Authority may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“**Development Property**” means the real property and improvements thereon located at 3707 Coon Rapids Boulevard in Coon Rapids, Minnesota.

“**Developer**” means Autumn Glen Senior Living, LLC or its permitted successors and assigns.

“**Grant**” means the funds granted by the Authority to Autumn Glen pursuant to this Agreement and as authorized by law.

“**Grant Proceeds**” means the funds disbursed to Autumn Glen pursuant to this Agreement and any proceeds thereof.

“Grantee” means Autumn Glen Senior Living, LLC, a Minnesota Limited Liability Company.

"Minimum Improvements" means Autumn Glen's construction of a 100 unit senior housing campus, including 32 independent living units, 36 assisted living units, and 32 memory care units and related demolition, soil, site, utility, landscaping, pavement, storm water, and lighting work at the real property located at 3707 Coon Rapids Boulevard, Coon Rapids, MN 55433.

“Tax Increment Act” or “TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Section 469.174 to 469.1799, as amended.

“Termination Date” means the later of the date the job creation goals established in Section 4.5 of this Agreement are met or the date the grant funds are repaid in full in the event of default.

ARTICLE 2

Representations and Warranties

Section 2.1. Representations and Covenants by the Authority. The Authority represents that:

- a) The Authority is an economic development authority duly organized and existing under the laws of the State of Minnesota. Under the provisions of the Act and the TIF Act, the Authority has the power to enter into this Agreement and carry out its obligations hereunder.
- b) The Authority will assist the Developer to facilitate development of the Minimum Improvements including but not limited to reasonably cooperating with Autumn Glen in obtaining necessary administrative and land use approvals.
- c) The activities of the Authority are undertaken to encourage redevelopment of an obsolete site, produce new senior housing units that meet certain targeted senior markets, and increase tax base within the City.
- d) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented limited by or conflicts with or results in a breach of, the terms, conditions or provisions of charter or statutory limitation or any indebtedness, agreement or instrument of whatever nature to which the Authority is now a party or by which it is bound, or constitutes a default under any of the foregoing.
- e) The Authority shall promptly advise Autumn Glen in writing of all litigation or claims affecting any part of the Minimum Improvements.

Section 2.2. Representations and Warranties by Autumn Glen. Autumn Glen represents and warrants that:

- a) Autumn Glen is a Minnesota Limited Liability Company organized and in good standing

under the laws of the State of Minnesota, is not in violation of any provisions of its bylaws, its partnership agreement or the laws of the State, is duly authorized to transact business within the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its Board of Directors.

- b) Autumn Glen or its permitted assigns will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement and all applicable local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations).
- c) Autumn Glen will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.
- d) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any partnership or company restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which Autumn Glen is now a party or by which it is bound, or constitutes a default under any of the foregoing.
- e) Autumn Glen shall promptly advise the Authority in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting Autumn Glen or its business, which may delay or require changes in construction of the Minimum Improvements.
- f) The proposed redevelopment and construction of the Minimum Improvements on the Development Property hereunder would not occur but for the financial assistance being provided by the Authority hereunder.

ARTICLE 3

Construction of the Minimum Improvements

Section 3.1. Construction of Minimum Improvements. Autumn Glen agrees that it will construct or cause construction of the Minimum Improvements on the Development Property, in accordance with approved Construction Plans will operate, maintain, preserve and keep the respective components of the Minimum Improvements or cause such components to be operated, maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

Section 3.2. Construction Plans.

- a) Generally. Before commencing construction of the Minimum Improvements, Autumn Glen shall submit to the Authority Construction Plans for the Minimum Improvements. The City's chief building official and community development director will review and approve all Construction Plans on behalf of the Authority, and for the purposes of this Section the term "Authority" means those named officials. The Construction Plans shall provide for the construction of the Minimum Improvements and shall be in conformity with this Agreement and all applicable State and local laws and regulations. The Authority will approve the Construction Plans in writing or by issuance of a permit if: (i) the Construction Plans conform to all terms and conditions of this Agreement, (ii) the Construction Plans conform to all applicable federal, state and local laws, ordinances, rules and regulations; (iv) the Construction Plans are adequate to provide for construction of the Minimum Improvements; and (v) there is no uncured Event of Default. No approval by the Authority shall relieve Autumn Glen of the obligation to comply with the terms of this Agreement, applicable federal, state and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the Authority shall constitute a waiver of an Event of Default, or waiver of any State or City building or other code requirements that may apply. Within 30 days after receipt of complete Construction Plans and permit applications for the Minimum Improvements, the Authority will deliver to Autumn Glen an initial review letter describing any comments or changes requested by Authority staff. Thereafter, the parties shall negotiate in good faith regarding final approval of Construction Plans for that building. The Authority's approval shall not be unreasonably withheld or delayed. Said approval shall constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the Authority's satisfaction with the provisions of this Agreement relating thereto.

Autumn Glen hereby waives any and all claims and causes of action whatsoever resulting from the review of the Construction Plans by the Authority and/or any changes in the Construction Plans requested by the Authority, except for any failure by Authority to perform its obligations under this Section. Neither the Authority, the City, nor any employee or official of the Authority or City shall be responsible in any manner whatsoever for any defect in the Construction Plans or in any work done pursuant to the Construction Plans, including changes requested by the Authority.

- b) Construction Plan Changes. If Autumn Glen desires to make any material change in the Construction Plans or any component thereof after their approval by the Authority, then Autumn Glen shall submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 3.2 of this Agreement with respect to such previously approved Construction Plans, the Authority shall approve the proposed change and notify Autumn Glen in writing of its approval. Such change in the Construction Plans shall, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to Autumn Glen, setting forth in detail the reasons therefor. Such rejection shall be made as soon as reasonably practicable but in any event within 30 days after receipt of the notice of such change. The Authority's approval of any such change in the Construction Plans will not

be unreasonably withheld.

Section 3.3. Completion of Construction.

- a) Subject to Unavoidable Delays, the Minimum Improvements must be constructed in accordance with the following schedule: commence construction by August 1, 2012, and complete construction by December 31, 2013. Construction is considered to be commenced upon the beginning of physical improvements beyond final grading of the cleared lot.
- b) All work with respect to the Minimum Improvements to be constructed or provided by Autumn Glen on the Development Property shall be in substantial conformity with the Construction Plans as submitted by Autumn Glen and approved by the Authority. Autumn Glen agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that Autumn Glen, and such successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the Development Property through the construction of the Minimum Improvements thereon, and that such construction shall in any event be commenced and completed within the period specified in this Section 3.3 of this Agreement. Until construction of the Minimum Improvements has been completed, Autumn Glen shall make reports, in such detail and at such times as may reasonably be requested by the Authority, as to the actual progress of Autumn Glen with respect to such construction.

Section 3.4. Certificate of Completion.

- a) Promptly after substantial completion of the Minimum Improvements in accordance with those provisions of the Agreement relating solely to the obligations of Autumn Glen to construct the Minimum Improvements (including the dates for completion thereof), the Authority will furnish Autumn Glen with a Certificate of Completion in substantially the form attached as Schedule B. Such certification by the Authority shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in any deed with respect to the obligations of Autumn Glen, and its successors and assigns, to construct the Minimum Improvements and the dates for the completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of Autumn Glen to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof.
- b) The Certificate of Completion provided for in this Section 3.4 of this Agreement shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property. If the Authority shall refuse or fail to provide any certification in accordance with the provisions of this Section 3.4 of this Agreement, the Authority shall, within thirty (30) days after written request by Autumn Glen, provide Autumn Glen with a written statement, indicating in adequate detail in what respects Autumn Glen has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for Autumn Glen to take or perform in order to obtain such certification.

- c) The construction of the Minimum Improvements will be considered substantially complete when Autumn Glen has received a certificate of occupancy from the City for all Residential Housing Units.

Section 3.5. Cost of Minimum Improvements. The estimated cost of the Minimum Improvements is \$11,675,000. This includes \$120,000 for building and site demolition and \$300,000 for site and utility work.

Section 3.6. Records. The Authority, the Legislative Auditor, and the State Auditor's office, through any authorized representatives, shall have the right after reasonable notice to inspect, examine and copy all books and records of Autumn Glen relating to the construction of the Minimum Improvements. Autumn Glen shall maintain such records and provide such rights of inspection for a period of six years after issuance of the Certificate of Completion for the Minimum Improvements.

ARTICLE 4

Economic Development Assistance

Section 4.1. Grant Amount. The Grant amount is \$420,000.

Section 4.2. Disbursement of Funds. Grant Proceeds will be disbursed upon Autumn Glen meeting all of the following conditions:

- a) Execution of this Agreement;
- b) Receipt of site plan approval from the City Council;
- c) Submission of sworn construction statements and documentation of actual expenditures for building and site demolition, earthwork and utilities. Autumn Glen will also provide an accounting of all costs incurred for the Minimum Improvements after the Project is completed.
- d) Submission of a master plan for the Development Property and the property at 3789 Coon Rapids Boulevard and a letter of endorsement from the owner of the property at 3789 Coon Rapids Boulevard.

Section 4.3. Project Time Frame. Construction of the Project must be completed by December 31, 2013.

Section 4.4. Uses of Funds. Grant Proceeds must be used to offset the cost of construction of the Project, as follows:

	Autumn Glen Senior Living	Authority	Total Cost
Building	\$10,285,000	\$0	\$10,285,000
Building/Site Demolition	\$0	\$120,000	\$120,000
Earthwork /Site Utilities	\$0	\$300,000	\$300,000

Pavement/Landscaping/ Other Site Work	\$970,000	\$0	\$970,000
Total	\$11,255,000	\$420,000	\$11,675,000

Section 4.5. Terms of Grant. The Developer is receiving under the terms of this Agreement the grant funds under the following terms:

- a) The project will create jobs in the City and the State of Minnesota, including construction jobs.
- b) The project will encourage redevelopment of an obsolete site, and produce new senior housing units in the City.
- c) Certification of the tax increment district from which the grant funds will be provided occurred prior to June 30, 2012.
- d) The Developer will create at least 25 new jobs (full-time equivalent) at 3707 Coon Rapids Boulevard by December 31, 2014. The 25 new jobs will have an average wage of \$12.00 per hour and average value of benefits of \$3.00 per hour.
- e) The Developer agrees that neither it nor its successors or assigns will cause a reduction in the real estate taxes paid by seeking to reduce the taxable value of the property below a minimum market value of \$8,000,000 after January 1, 2014. The agreement not to cause a reduction in real estate taxes will terminate on December 31, 2019.
- f) But for the grant funds under the terms of this agreement, the project would not occur.

Section 4.5. Exemption from Business Subsidy Act. The parties agree and understand that the provision of grant funds to Autumn Glen under this Agreement represent assistance for housing, and accordingly is not subject to the Business Subsidy Act.

ARTICLE 5

Prohibitions Against Assignment and Transfer; Indemnification

Section 5.1. Representations as to Redevelopment. The Developer represents and agrees that its purchase of the Development Property, and its other undertakings pursuant to the Agreement, are, and will be used, for the purpose of the redevelopment of the property in accordance with the plans for the minimum improvements and their stated use for senior housing and not for speculation or land holding.

Section 5.2. Prohibition Against Transfer of Property and Assignment of Agreement. The Developer represents and agrees that until the Termination Date:

- (a) Except as specifically described in this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of

or with respect to this Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, to any person or entity without the prior written approval of the Authority's Board of Commissioners. The term "transfer" does not include (i) encumbrances made or granted by way of security for, and only for, the purpose of obtaining construction, interim or permanent financing necessary to enable the Developer or any successor in interest to the Development Property or to construct the Minimum Improvements or components thereof; and (ii) any lease, license, easement or similar arrangement entered into in the ordinary course of business related to the operation of the Minimum Improvements or components thereof as senior housing consistent with operational plans submitted by Autumn Glen.

(b) If the Developer seeks to effect a transfer, the Authority shall be entitled to require conditions to such Transfer that (i) any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer as to the portion of the property to be transferred and (ii) any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable in the public land records of Anoka County, Minnesota, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority, have expressly assumed all of the obligations of the Developer under this Agreement as to the portion of the property to be transferred and agreed to be subject to all the conditions and restriction to which the Developer is subject as to such portion. In the absence of specific written agreement by the Authority to the contrary, no such transfer or approval by the Authority thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the property, from any of its obligations with respect thereto. Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article 5, shall be in a form reasonably satisfactory to the Authority.

(c) If the conditions described in paragraph (b) are satisfied, then the Transfer will be approved and the Developer shall be released from its obligations under this Agreement, as to the portion of the Development Property so transferred, unless the parties mutually agree otherwise. Notwithstanding anything to the contrary herein, any Transfer that releases the Developer from its obligations under this Agreement shall be approved by the Authority's Board of Commissioners. If the Developer remains fully bound by the terms of this Agreement notwithstanding the transfer, as documented in the transfer instrument, the Transfer may be approved by the Authority Representative. The provisions of this paragraph (c) apply to all subsequent transferors.

Section 5.3. Release of Indemnification Covenants.

(a) The Developer releases and covenants and agrees that the Authority and the City and the governing body members, officers, agents, servants and employees thereof shall not be liable for and agrees to indemnify and hold harmless the Authority and the City and the governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting

from any defect in the Minimum Improvements.

(b) Except for willful or negligent misrepresentation, misconduct or negligence of the Indemnified Parties, and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Developer agrees to protect and defend the Authority and the City and the governing body member, officers, agents, servants and employees thereof (the Indemnified Parties), now and forever, and further agrees to hold the Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements.

(c) Except for any negligence of the Indemnified Parties and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the minimum improvements due to any act of negligence of any person.

(d) All covenants, stipulations, promises, agreements and obligations of the Authority contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and not of any governing body member, officer, agent, servant or employee of the Authority in the individual capacity thereof.

ARTICLE 6

Events of Default

Section 6.1. Events of Default Defined. The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides 30 days written notice to the defaulting party of the event, but only if the event has not been cured within said 30 days or, if the event is by its nature incurable within 30 days, the defaulting party does not, within such 30-day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

- a) Failure by the Developer or its Assignee, or the Authority to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement;
- b) Developer:
 - i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;

- ii) makes an assignment for benefit of its creditors;
- iii) admits in writing its inability to pay its debts generally as they become due; or is adjudicated as bankrupt or insolvent.

Section 6.2. Remedies on Default.

- a) Whenever any Event of Default referred to in Section 6.1 of this Agreement occurs, the non-defaulting party may exercise its rights under this Section 6.2 after providing thirty days written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty days or, if the Event of Default is by its nature incurable within thirty days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible.
- b) Upon an Event of Default by the Developer, the Authority may (i) demand repayment of the Grant Proceeds and (ii) take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.
- c) If the Minimum Improvements are not completed by December 31, 2013, all Grant Proceeds will be treated as a loan and must be returned to the Authority. The terms of the loan, if applicable, shall be equal monthly payments over the course of five years with interest at a rate of seven percent per annum. If the Developer fails to satisfy the requirements for job creation and retention described in Section 4.5, Grant Proceeds must be returned on a pro rata basis based on the number of jobs actually created compared to the goal of 25 new jobs.

Section 6.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or Autumn Glen is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article IX.

Section 6.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE 7

Reporting

Section 7.1. Reporting. On or before March 1 of each year, the Developer shall provide to the City information regarding the job creation goals established in Section 4.5 of this Agreement until the goals are met. This reporting shall include the number of jobs created, wage levels, and value of benefits. If the goals are not met, Autumn Glen must continue to provide information on the Grant until the Grant is repaid.

ARTICLE 8

Additional Provisions

Section 8.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and Autumn Glen, to the best of their respective knowledge, represent and agree that no member, official, or employee of the Authority shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects a personal interest or the interests of any corporation, partnership, or association in which the member, official or employee is directly or indirectly, interested. No member, official or employee of the Authority shall be personally liable to Autumn Glen, or any successor in interest, in the event of any default or breach by the Authority or for any amount which may become due to Autumn Glen or successor or on any obligations under the terms of the Agreement.

Section 8.2. Equal Employment Opportunity. Autumn Glen, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in the Agreement it will comply with all applicable federal, state and local equal employment and nondiscrimination laws and regulations.

Section 8.3. Restrictions on Use. Autumn Glen agrees that until the termination date, Autumn Glen, its successors and assigns, shall devote the Development Property to the operation of the Minimum Improvements for uses described in the definition of such term in this Agreement and as described and proposed by Autumn Glen in seeking permits and approvals for the project, and shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 8.4. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is served by registered or certified mail, postage prepaid, return receipt requested, overnight mail, or delivered personally.

Section 8.5. Counterparts. This Agreement may be executed in any number of counterparts,

each of which shall constitute one and the same instrument.

Section 8.6. Recording. The Authority may record this Agreement and any amendments thereto with the Anoka County Recorder.

Section 8.7. Amendment. This Agreement may be amended only by written agreement approved by the Authority and Autumn Glen.

Section 8.8. Termination. This Agreement terminates on the Termination Date, except that termination of the Agreement does not terminate, limit or affect the rights of any party that arise before the termination date.

IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed in its name and behalf and Autumn Glen has caused this Agreement to be duly executed in its name and behalf as of the date first above written.

**ECONOMIC DEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF COON RAPIDS**

By _____

Tim Howe, Chair

By _____

Denise Klint, Secretary

APPROVED AS TO FORM

By _____

David Brodie, Acting City Attorney

AUTUMN GLEN SENIOR LIVING, LLC, a Minnesota Corporation

By _____

Name _____

Its _____

RESOLUTION EDA 12-2

**RESOLUTION AUTHORIZING THE EXPENDITURE OF EXCESS TAX INCREMENTS
FROM TAX INCREMENT FINANCING DISTRICT 1-6 FOR SENIOR HOUSING PROJECT
BY AUTUMN GLEN SENIOR LIVING, LLC**

WHEREAS, the budget of tax increment financing district 1-6 allows for eligible expenditure of tax increments to facilitate private redevelopment of blighted property; and

WHEREAS, Autumn Glen Senior Living, LLC proposes constructing a 100 unit senior housing campus, including 32 independent living units, 36 assisted living units, and 32 memory care units at 3707 Coon Rapids Boulevard; and

WHEREAS, construction of this project aligns with the City's goals and objectives of encouraging redevelopment of blighted property, and providing a variety of housing choices in the City; and

WHEREAS, Autumn Glen Senior Living, LLC is financing \$11,255,000 of the project; and

WHEREAS, additional assistance from the City is necessary to fully fund the required improvements and the project would not occur but for the assistance; and

WHEREAS, the City gave notice of a public hearing before the City Council regarding the expenditure of the tax increment on June 8, 2012 and held the public hearing at its meeting on June 19, 2012.

NOW THEREFORE, BE IT RESOLVED by the Economic Development Authority in and for the City of Coon Rapids, to expend tax increments in the form of a grant in the amount of \$420,000 from Tax Increment Financing District 1-6 for the purpose of constructing a 100 unit senior housing campus at 3707 Coon Rapids Boulevard.

Adopted this 19th day of June, 2012.

Tim Howe, Chair

ATTEST:

Denise Klint, Secretary